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In this issue of *The Arrest News*:

- *Alternatives to Ship Arrests: Using Mareva Injunctions in Ship Sale Disputes* by Elliot Woodruff, CMS Hong Kong
- *Grounding of ANNA P.C. and Oil Pollution in the Suez Canal: Egyptian Court of Cassation Ruling, Appeal No. 13684/83 (March 13, 2023)* by Usama Soliman, Soliman Advocates (Egypt)
- *Can a Vessel Owned by an Inactive or Dissolved Company be seized under Turkish law?* by Edanur Şenel, Mare Legal
- *Guide to Shipping Law in Türkiye: Procedures, Liabilities and Ship Arrest* by Efe Ülken, Ülken Law Firm

Alternatives to Ship Arrests: Using Mareva Injunctions in Ship Sale Disputes

by Elliot Woodruff, CMS Hong Kong

The arrest of a vessel is a well-known and frequently used remedy for claimants seeking to secure their claims in shipping disputes. But ship arrests are not a universal tool fit for every purpose or available in every circumstance. Luckily for claimants, there is an alternative remedy that can be deployed in imaginative ways. A recent case we handled in Hong Kong highlights just how effective one such alternative remedy - the Mareva (freezing) injunction – can be; in this example to protect an innocent buyer from an unscrupulous seller in a ship sale and purchase transaction.

Background: Ship Sale Dispute and the Risk of Asset Dissipation

The claimant, a Liberian-incorporated company, had entered into negotiations and ultimately agreed on the main commercial terms for the purchase of a Hong Kong-registered vessel from a Hong Kong-incorporated seller.

After extensive correspondence and the exchange of draft memoranda of agreement (MOA), the buyer executed the MOA based on the Norwegian Sale Form 2012 (NSF 2012) and returned it to the seller for signature. However, the seller failed to execute the MOA and subsequently fell silent. It later emerged that the seller had sold the vessel to a third party for a higher price, despite having reached a binding agreement with the original buyer. The vessel, being

the seller's only significant asset, was at imminent risk of being transferred out of reach, leaving the buyer with little recourse.

Mareva Injunctions: A Viable Alternative?

Faced with the risk that the seller would dissipate its only asset—the vessel—the claimant sought a worldwide Mareva injunction from the Hong Kong court.

Unlike a ship arrest, which is limited to detaining the vessel within a particular jurisdiction, a Mareva injunction (also known as a freezing order) can restrain a defendant from disposing of or dealing with assets worldwide, including but not limited to the vessel itself. This remedy is particularly valuable where the defendant is a single-ship company and the vessel is not physically present within the jurisdiction, or where the risk of asset dissipation is acute.

A Mareva injunction also has a powerful effect on third parties, who, when served with notice of the order, put themselves at risk if they cause or permit the defendant's assets to be dissipated.

It was this feature that underpinned the strategy of obtaining a Mareva injunction in Hong Kong.

Why?

First, the Seller was a Hong Kong based company and immediately amenable to the jurisdiction of the Hong Kong court. Second, the vessel was a Hong Kong registered ship. The Marine Department (Hong Kong Registry) maintains the register of Hong Kong-flagged vessels and is responsible for recording changes in ownership and registration. By serving the injunction order on the Marine Department, the claimant would fix the department with notice, and put it at risk of being in contempt of court if it facilitated the deletion of the vessel from the Hong Kong Register.

We hoped to block any attempt to transfer the vessel's registration or ownership, thereby giving utility and practical effect to the court's order (an essential

consideration in the court's eyes when granting such relief).

Without such service, there was a risk that the vessel could be transferred to a third party or re-registered elsewhere, undermining the purpose of the injunction. Service on the Marine Department would therefore act as a safeguard, alerting the authorities to the existence of the court order and ensuring that the vessel would not be lawfully transferred or deregistered without the court's knowledge or further order.

Key Features and Legal Considerations

The application was made *ex parte* (without notice to the Seller) due to the urgency and the real risk that the vessel could be sold and the proceeds moved beyond the reach of any future arbitral award or judgment.

The Mareva injunction was sought in aid of arbitration, as the MOA contained a London arbitration clause. The Hong Kong courts, under both the High Court Ordinance and the Arbitration Ordinance, have jurisdiction to grant such relief in support of foreign-seated arbitrations.

The application in this case was supported by detailed evidence of the contractual negotiations, the binding nature of the agreement under English law, and the urgency created by the Seller's conduct. The claimant demonstrated that the Seller's only asset of substance was the vessel, and that the proceeds of any sale could be swiftly moved offshore, rendering the claimant "judgment proof." The court was also informed of the claimant's willingness and ability to provide a cross-undertaking in damages; a standard requirement for the grant of such interim relief.

The Mareva injunction was granted and the Marine Department duly served with the injunction order. Faced with the impossibility of obtaining a deletion certificate from the Hong Kong Registry, the unscrupulous Seller returned to the negotiating table, agreeing to the sale and paying our clients' costs. A

just result obtained quickly and without a protracted (and possibly pointless) arbitration.

Advantages Compared to Ship Arrests

The use of a Mareva injunction offers several advantages over traditional ship arrest:

Wider Reach: It can restrain the defendant from dealing with assets globally, not just the vessel in a particular port.

Flexibility: It is available even when the vessel is not within the jurisdiction, or when the claim is not one for one which it is possible to arrest, or when the defendant's assets are otherwise difficult to locate or attach.

Support for Arbitration: It can be granted in support of arbitral proceedings, providing effective interim relief pending the outcome of the arbitration.

Conclusion

This case underscores the importance of considering alternatives to ship arrest in maritime disputes, especially where the risk of asset dissipation is high and the vessel may not be within an arrest-friendly jurisdiction. The Mareva injunction is a potent remedy that can secure a claimant's position and ensure that a successful award or judgment is not rendered nugatory by the defendant's actions. Maritime practitioners should be alert to the strategic use of such interim measures, particularly in the increasingly global and fast-moving context of ship sale and purchase transactions.



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Grounding of ANNA P.C. and Oil Pollution in the Suez Canal: Egyptian Court of Cassation Ruling, Appeal No. 13684/83 by Usama Soliman, Soliman Advocates

Introduction

On 13 March 2023, the Egyptian Court of Cassation delivered a landmark judgment concerning the grounding of the Liberian-flagged tanker ANNA P.C. in the Suez Canal back in 2006. The incident caused a massive oil spill extending across wide areas of the Canal and resulted in extensive damage affecting residential and tourist villages, fishermen, fish farms, private properties, and agricultural lands. The ruling highlights how Egyptian courts approach environmental pollution claims arising in one of the world's most strategic waterways.

Facts

On 20 September 2006, while transiting the Suez Canal, ANNA P.C. ran aground and struck the eastern bank of the Canal (Kreit area). The grounding led to a spill of approximately 1,000 tons of oil, which spread widely across the waterway.

The pollution caused:

- Destruction of a large 48-feddan farm containing a dense tree plantation.
- Severe damage to eucalyptus and casuarina trees across the farmland.
- Contamination of a "gouna" (lagoon) area of 2,500 sqm with fruit-bearing trees.
- Widespread oil slicks reaching other farmlands and private properties.
- Negative impact on surrounding residential and tourist villages.
- Direct harm to fishermen and fish farms operating along the Canal.

The damage was documented in official police

reports and confirmed by agricultural experts who surveyed the affected lands and vegetation.

Judicial Proceedings

The farm owner filed a compensation claim against the shipowners. The dispute passed through the courts of first instance and appeal until it reached the Court of Cassation under Appeal No. 13684/83.

On 13 March 2023, the Court confirmed that oil pollution caused by the grounding was sufficient grounds for a conservatory arrest of the vessel and for compensation claims under Egyptian Maritime Law No. 8/1990 and Environmental Law No. 4/1994.

Legal Analysis

The judgment reaffirmed that freedom of navigation in the Suez Canal, secured under the Constantinople Convention of 1888, does not exempt vessels from compliance with national laws on marine environmental protection. The Court emphasized that shipowners remain directly liable for pollution damage caused during transit, regardless of the Canal's international status.

Role of P&I Clubs

The case underlined the critical role of Protection & Indemnity (P&I) Clubs in such incidents, particularly in:

- Prompt payment of compensation to affected parties.
- Providing adequate guarantees to lift arrests and ensure uninterrupted navigation.
- Urging local correspondents to engage quickly with Egyptian authorities to mitigate disputes and environmental risks.

Key Takeaways

- Private parties (such as farm owners) can bring direct claims for compensation in pollution cases.

- Egyptian courts endorse conservatory arrest as an effective tool for securing environmental and financial claims.
- P&I Clubs are expected to play a proactive role in pollution cases in Egypt, balancing navigation interests with urgent environmental protection.
- The ruling reflects the growing global trend of integrating environmental considerations into maritime disputes.



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Can A Vessel Owned by an Inactive or Dissolved Company be Seized Under Turkish Law? by Edanur Şenel, Mare Legal

Introduction

Under Turkish law, when a company completes liquidation and is removed from the trade registry, it ceases to exist as a legal entity. In practice, however, valuable assets such as ships or yachts may still remain registered in the name of such a dissolved company or surface later in disputes. This raises an important practical question: Can a ship or yacht that appears to be owned by an “inactive” company be seized as a precautionary measure to secure a creditor's claim?

Turkish maritime law provides creditors with two distinct forms of protection. The first is maritime liens (TCC Articles 1321–1326), which grant creditors a direct in rem right over the vessel that survives even if the vessel is sold to a new owner. The second is maritime claims (TCC Article 1352 et seq.), which form

the basis for obtaining ship arrest order from the courts.

Arrest of ships is a court-ordered temporary seizure of a vessel to secure a maritime claim until the claim is adjudicated. Turkey's Commercial Code, influenced by the 1999 Geneva Arrest of Ships Convention, sets out a comprehensive framework for such arrests. As a result, ship arrest functions as a specialized remedy designed exclusively for maritime claims, distinct from ordinary enforcement against other assets.

However, uncertainty arises when the registered shipowner is a company that no longer operates or has been dissolved. The following analysis explores how Turkish law addresses this situation, balancing creditors' rights with the legal status of such companies, and aims to clarify the practical implications for maritime creditors.

What is an "Inactive" Company?

In everyday terms, an inactive company might mean a company that isn't conducting business. Legally, however, it's crucial to distinguish between:

Companies in Liquidation: These are companies that have decided to dissolve and are in the process of winding up (liquidation), but have not yet been removed from the trade registry.

Dissolved Companies: These are companies whose liquidation has finished and which have been deregistered (canceled) from the trade registry, whether by a voluntary process or by an administrative act (ex officio). Once removed from the registry, the company's legal personality is extinguished.

The problem at hand arises when a vessel is still registered under the name of a company that falls into one of the above categories. Creditors might be concerned that the company is defunct or unreachable (especially common if ships are owned by single-purpose offshore companies that later become inactive). We must analyze each scenario to

see if a precautionary arrest of the vessel is legally possible.

Case 1: Ship Owned by a Company In Liquidation (Not Yet Dissolved)

If a company is undergoing liquidation but not yet deregistered, it continues to have legal personality. The company may be "inactive" in the sense of not trading, but in the eyes of the law it is still alive. This means creditors can pursue legal actions and enforcement against the company's assets as usual. In other words, the lack of ongoing business activity or the fact of liquidation does not bar creditors from seeking a ship arrest. As long as the company remains on the registry, it can be named as a debtor in enforcement proceedings and precautionary measures.

Case 2: Ship Owned by a Dissolved Company (Removed from Registry)

Once a company is liquidated and removed from the trade registry, it loses legal personality and cannot normally be sued or pursued as a debtor. At first glance, this would seem to prevent arrest of a vessel still registered in its name. However, Turkish law provides a remedy: under TCC Provisional Article 7, creditors may request the "revival" of a dissolved company for the sole purpose of addressing newly-discovered claims. If granted, the company is temporarily restored, a liquidator is appointed, and the vessel can be arrested as its asset. Importantly, following the 2023 Constitutional Court decision (Case 2023/117), revival applications are no longer subject to a time limit, meaning creditors can pursue this remedy at any time, even years after dissolution.

In addition to that and in practise, many yachts are not held by Turkish companies at all but by foreign offshore entities, such as companies incorporated in the British Virgin Islands, Cayman Islands, or the Marshall Islands. These are typically "single-purpose" ownership vehicles that may later be dissolved in their home jurisdiction, even while the yacht continues to sail or remains registered under their name. Under

Article 1352 TCC, creditors may pursue provisional attachment against the yacht as long as their claim qualifies as a maritime claim and the yacht is physically present in Turkey. The action is directed not against the foreign company per se but against the ship as property subject to arrest.

For certain claims (e.g., crew wages, salvage, port dues), Turkish law grants creditors maritime liens under Articles 1321–1326 TCC. These liens attach to the yacht itself, regardless of who the registered owner is or whether the owning company exists. In such cases, the creditor may enforce directly against the yacht without needing the company to exist.

Conclusion

Under Turkish law, the arrest of vessels remains possible even when the registered owner is inactive or dissolved. If the owning company is still in liquidation, the vessel can be directly arrested as part of its assets. If the company has been dissolved and struck from the trade registry, creditors are not left without remedy: they may request the revival of the company and pursue arrest against its yacht. Moreover, maritime liens under the TCC attach directly to the vessel itself, ensuring that certain privileged claims can be enforced regardless of the owner's legal existence. In practice, this means that vessels—whether held by Turkish or foreign single-purpose entities—remain accessible to creditors through arrest, preserving the integrity of maritime claims in Turkey.



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Guide to Shipping Law in Türkiye: Procedures, Liabilities and Ship Arrest by Efe Ülken, Ülken Law Firm

Introduction

Türkiye, by virtue of its geostrategic position, occupies a central place in international maritime trade and plays a critical role in global shipping through the straits connecting the Black Sea to the Mediterranean.

With its shipping activities, port infrastructure, shipyards, and rapidly growing yachting sector, Türkiye has become a significant hub for operations and investment with respect to both commercial vessels and private yachts. These developments make it essential for investors, shipowners, banks, and insurers active in the maritime industry to gain a sound understanding of the framework offered by the Turkish legal system.

In particular, legal procedures encountered in maritime trade, the liability regimes of the parties, and the arrest of ships or yachts in Türkiye carry substantial practical importance. This article aims to provide both domestic and international stakeholders with a practical guide by examining procedures, liability regimes, and ship/yacht arrest practices under the provisions of the Turkish Commercial Code and in light of the international conventions to which Türkiye is a party.

1. Liability in Maritime Casualties

(i) Collision

Articles 1286 and the following articles of the Turkish Commercial Code No. 6102 ("TCC") regulate the liability regime applicable in cases of collision, defined as the contact between two or more vessels. Under this regime, the principal rule is liability based on fault. Accordingly, if the collision arises from the fault of the owner or crew of one of the vessels, the damages shall be compensated by the owner of that

vessel. In cases where no party is at fault or the cause of the collision remains unknown, each party shall bear its own losses.

In instances of contributory fault where multiple vessels are at fault, damages to cargo on board the vessels shall be apportioned among the owners in proportion to their respective fault, and no joint and several liability shall be imposed towards third parties. However, with respect to bodily injury or death, the owners shall be jointly and severally liable towards third parties, with recourse among themselves in accordance with their degree of fault.

(ii) Grounding and Wreck Removal

In major maritime casualties such as grounding, issues concerning the salvage of the vessel and the removal of wrecks arise. Although Türkiye is not a party to the 2007 Nairobi International Convention on the Removal of Wrecks, similar obligations have been established under national legislation. The Ports Law No. 618 and the relevant regulations (such as the Turkish Straits Maritime Traffic Regulations and the Port Regulation) impose the responsibility for the removal of wrecks within territorial waters or port areas upon the shipowner or the master of the vessel.

(iii) Marine Pollution

The prevention of and sanctions against ship-sourced pollution are comprehensively regulated under Turkish law. Article 56 of the Constitution imposes the duty to protect the environment on both the State and its citizens, while Articles 1320 and the following articles of the TCC recognize environmental damage as a maritime claim with priority status. Furthermore, under the Environmental Law No. 2872, the discharge of waste from ships is subject to severe administrative fines, the amount of which varies according to the tonnage of the vessel, the type of waste, and the nature of the pollution; in certain cases, even forfeiture of property is envisaged. In addition, administrative sanctions such as seizure of the vessel and prohibition of entry into ports may also be imposed.

2. Competent Authority in Maritime Casualties

The Transportation Safety Investigation Center, operating under the Ministry of Transport and Infrastructure, is the principal authority responsible for investigating maritime casualties in accordance with international standards. Pursuant to the Regulation on the Investigation of Marine Accidents and Incidents, the investigation and examination of such accidents and incidents fall within the duties, powers, and responsibilities of the Center. In the event of a maritime casualty, the relevant port authority within whose area of responsibility the incident occurs is obliged to promptly report the accident. In addition, depending on the location of the maritime accident, the Coast Guard Command and law enforcement agencies are also organizations responsible for responding to the accident.

3. Preservation of Evidence

Under the Code of Civil Procedure, parties may request the preservation and identification of evidence from the courts prior to the initiation of legal proceedings. Particularly in maritime accidents, the injured party may request the immediate preservation of evidence (such as ship parts, cargo remains, logbooks, radar records, etc.) to ensure its availability for subsequent examination. When evaluating such a request through unilateral (non-contentious) proceedings, the court considers the legal interest of the applicant and the risk of evidence being lost. For yachts and ships located in shipyards, the party with a legal interest may also request preservation from the court.

4. Cargo Claims & Carrier's Liability

The provisions of the TCC relating to maritime carriage (Articles 1138 and the following) are largely of a mandatory nature and comprehensively regulate the rights and obligations between the carrier and the cargo interests. As a rule, the carrier is obliged to deliver the cargo entrusted to it at the port of destination intact and on time. With respect to loss of

or damage to cargo, the carrier is subject to a liability regime approaching strict liability. In cases of total or partial loss or damage, the carrier cannot be exonerated unless it proves that the event causing the loss did not result from the intent or negligence of the carrier or its servants.

Article 1182 of the TCC sets out eight circumstances under which the carrier may be relieved of liability. These include perils and accidents of the sea or other navigable waters; acts of war, civil commotion, and insurrection; acts of public enemies; orders of competent authorities or quarantine restrictions; acts of courts or seizures; strikes, lockouts, or other labor disturbances; acts or omissions of the shipper, consignee, owner of the goods or their agents; natural shrinkage in volume or weight, latent defects or inherent characteristics of the goods; inadequacy of packaging; and insufficiency of marks. Such grounds are recognized as circumstances exonerating the carrier from liability.

Furthermore, the carrier's liability for delay in delivery is also regulated under the TCC. Cargo is deemed to have been delivered late if it is not delivered at the port of discharge within the expressly agreed period under the charterparty, or, in the absence of such express agreement, within a period that a prudent carrier could reasonably be expected to complete the delivery under the circumstances. Any person entitled to claim compensation on the grounds of loss of cargo may treat the cargo as lost if it has not been delivered within sixty consecutive days following the expiry of the delivery period.

It should also be noted that in maritime carriage, the consignee or charterer bears responsibility for the accuracy and completeness of the information provided to the carrier regarding the cargo. Pursuant to Article 1145 of the TCC, the consignee and the charterer are obliged to provide full and accurate information concerning the type, quantity, and dangerous nature of the goods; in case of breach, they shall indemnify the carrier for all losses arising from inaccurate declarations. For instance, where the

nature of dangerous goods (explosive, flammable, toxic, etc.) is concealed or misdeclared, the consignee or charterer shall be held liable for any damage thereby caused to the vessel, other cargo, or the environment, irrespective of fault.

5. Maritime Claims and Ship/Yacht Arrest

The only form of provisional legal protection specifically provided for in the TCC with respect to vessels is precautionary arrest. The arrest of a vessel is permissible solely in respect of claims expressly enumerated under Article 1352 of the TCC and classified as "maritime claims." In other words, a vessel may only be subject to precautionary arrest for claims falling within the definition of maritime claims under the TCC. Accordingly, a creditor holding a claim not deemed a maritime claim may seek the precautionary attachment of assets other than the vessel belonging to the shipowner, in accordance with the general provisions of the Enforcement and Bankruptcy Law No. 2004 ("EBL").

As a rule, precautionary arrest orders are granted in respect of matured claims. The creditor is required, at first glance, to demonstrate the amount of the claim and to establish that such claim qualifies as a maritime claim under Article 1352 of the TCC. However, pursuant to Article 257 of the EBL, where the debtor engages in fraudulent transactions with the intent to evade obligations, prepares to abscond, or actually absconds, a precautionary arrest order may also be granted in respect of unmatured claims.

6. Security

The TCC and the relevant legislation regulate the provision of security both by the creditor requesting a precautionary arrest and by the debtor seeking the release of the arrested vessel. Accordingly, a creditor applying for a precautionary arrest in order to secure a maritime claim is, as a rule, required to provide security in the amount of 10,000 Special Drawing Rights (SDR). However, claims of crew members relating to wages and other entitlements arising from

their employment on board the vessel, including repatriation costs and social insurance contributions payable on their behalf, are exempt from this requirement.

In order to secure the release of an arrested vessel, the debtor may also furnish security. This is not an obligation but a right afforded to the debtor to enable the continuation of the vessel's commercial operations. The debtor or shipowner may secure the release of the vessel by providing security, the amount of which depends on the value of the claim and the vessel. Where the maritime claim exceeds the value of the vessel, security in the amount of the vessel's value is required; where the claim is less than the vessel's value, security equivalent to the amount of the claim suffices. In such cases, the precautionary arrest is lifted, and the security provided substitutes the vessel as the object of attachment.

7. Dispute Resolution Mechanisms

The most common disputes in the field of maritime commerce arise from delays in the delivery of cargo under charterparty agreements, non-payment of freight, and damage to cargo carried; from maritime casualties and marine pollution including collisions, loss of cargo, compensation claims arising from pollution, and disputes concerning the allocation of liability among the master, the shipowner, or the insurer; from breaches of ship sale and financing agreements, ship mortgages and related financial issues; and from disagreements concerning the scope of marine insurance and indemnity procedures.

Maritime disputes in Türkiye are adjudicated before the Commercial Courts of First Instance.

Enforcement offices are also judicial authorities responsible for the execution of court decisions. Judicial proceedings provide the advantage of state authority, decisions that are public and serve as precedents, and the availability of appellate review; however, such proceedings are often protracted and

may present difficulties in the international enforcement of judgments.

Arbitration, by contrast, is a private adjudicatory method whereby parties resolve disputes through independent arbitrators. Leading institutions in this field in Istanbul is Istanbul Arbitration Centre (ISTAC). Arbitration offers advantages such as speed, party autonomy in the selection of arbitrators, international enforceability of awards under the New York Convention, and confidentiality. Its disadvantages include limited grounds for appeal and the potential for significant costs due to arbitrators' fees.

8. Conclusion

Turkish maritime law, through both national legislation and international conventions to which Türkiye is a party, comprehensively safeguards the principles of safety, predictability, and environmental protection in maritime commerce. The detailed liability regime governing collision, marine pollution, cargo damage, and maritime claims clearly delineates the obligations of shipowners and carriers, while dispute resolution mechanisms provide alternative avenues through courts and arbitration suited to differing interests. In this regard, the Turkish legal framework constitutes not only a system for resolving private law disputes between parties but also a comprehensive and binding regime aimed at protecting public order, environmental security, and Türkiye's strategic position in international maritime trade.



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